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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,535	02/18/2004	Floyd Backes	160-021	2454
34845	7590	11/01/2006	EXAMINER	
McGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			TRINH, TAN H	
			ART UNIT	PAPER NUMBER
			2618	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,535	<b>Applicant(s)</b> BACKES ET AL.	
	<b>Examiner</b> TAN TRINH	<b>Art Unit</b> 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-5 is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 10-28-2004, 04-28-2005, 05-27-2005 and 10-04-2005, the information disclosure statement has been considered by the examiner.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/781, 159. Although the conflicting claims are not identical, they are not patentably distinct from each

other because the limitations of the claims 1-3 of the instant application are encompassed by the limitations of the claims 1-3 of the above copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 1 of the copending Application No. 10/781,159 discloses detecting that one or more other access points or device are also using the radio frequency channel; and responsive to the detecting for adjusting transmit power.

Regarding claim 2, claim 2 of the copending Application No. 10/781,159, teaches the limitations of: receiving message from the other device, and the message indicating of the power levels of the respective one or more other access points and device.

Regarding claim 3, claims 1-2 of the copending Application No. 10/781,159, teaches the limitations of: detecting that one or more other access points are also using the radio frequency channel; and responsive to the detecting for adjusting transmit power, and the message indicating of the power levels of the respective one or more other access points and device.

4. Claims 1-3 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/781, 474. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the claims 1-3 of the instant application are encompassed by the limitations of the claims 1-3 of the copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 1 of the copending Application No. 10/781,474, teaches the limitations of: detecting that one or more other access points are also using the radio frequency channel; and responsive to the detecting for adjusting transmit power.

Regarding claim 2, claim 2 of the copending Application No. 10/781,474, teaches the limitations of: adjusting transmit power does so in response to a message received from the another device, the message indicating the transmitted power level of the another device.

Regarding claim 3, claims 1-2 of the copending Application No. 10/781474, teaches the limitations of: detecting that one or more other access points are also using the radio frequency channel, and responsive to the detecting for adjusting transmit power.

5. Claims 1-3 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/781,137. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the claims 1-3 of the instant application are encompassed by the limitations of the claims 1-3 of the copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 1 of the copending Application No. 10/781,137, teaches the limitations of: detecting that one or more other access points are also using the radio frequency channel, and responsive to the detecting for adjusting transmit power.

Regarding claim 2, claim 2 of the copending Application No. 10/781,137, teaches the limitations of: adjusting transmit power does so in response to a message received from the another device, the message indicating the transmitted power level of the another device.

Regarding claim 3, claims 1-2 of the copending Application No. 10/781137, teaches the limitations of: detecting that one or more other access points are also using the radio frequency channel, and responsive to the detecting for adjusting transmit power.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Shpak (U.S. Patent No. 6,907,229).

Regarding claim 1, Shpak teaches a method for use by a device capable of communicating in a wireless communications environment via a radio frequency channel (see fig. 1, access points (AP) 22-23, 25 and 27, communication with multiple mobile stations 24, 29 and 31), comprising the steps of: detecting that another device is also using the radio frequency channel (see figs. 1-2, col. 3, lines 5-16, and col. 4, lines 10-44), (Since a second access point determine (detecting) that the downlink signals from the first access point, and the first and

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second access points device can transmit simultaneously, on the same frequency channel); adjusting transmit power in response to the detecting (see col. 4, lines 40 - col. 5, lines 18), (Since second access point transmitting the second downlink signal includes adjusting a second downlink).

Regarding claim 2, Shpak teaches wherein the step of adjusting transmit power does so in response to a message received from the another device (see col. 4, lines 40 - col. 5, lines 18), the message indicating the transmitted power level of the another device (see col. 9, lines 5-27), (since the power information in it broadcast message is indicating the power level of the another device is inform).

Regarding claim 3, Shpak teaches a method for use by a device capable of communicating in a wireless communications environment via a radio frequency channel (see fig. 1, access points (AP) 22-23, 25 and 27, communication with multiple mobile stations 24, 29 and 31), comprising the steps of: detecting that at another device is also using the radio frequency channel (see figs. 1-2, col. 3, lines 5-16, and col. 4, lines 10-44); adjusting transmit power in response to a message received from the another device (see col. 4, lines 40 - col. 5, lines 18, and col. 9, lines 5-17), the message indicating the power level of the another device (see col. 9, lines 5-27), (since the power information in it broadcast message is indicating the power level of the another device is inform).

***Allowable Subject Matter***

8. Claims 4-5 are allowed.

***Reasons for allowance***

9. The following is an examiner's statement of reasons for allowance:

Regarding claims 4-5, Shpak teaches a method for use by a device capable of communicating in a wireless communications environment via a radio frequency channel (see fig. 1, access points (AP) 22-23, 25 and 27, communication with multiple mobile stations 24, 29 and 31), and maintaining a known devices table (see col. 9, lines 5-17). However, Shpak, alone or in combination with other prior art of record, fail to disclose the known devices table includes an entry for each other device operating on the radio frequency channel, and wherein for each entry, a back off value is recorded for each other device; setting the transmit power of the apparatus to a level equivalent to the apparatus' maximum transmit power minus the maximum of the back off values recorded for each other device as specified in independent claim 4.

***Conclusion***

10. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

**(571) 273-8300, (for Technology Center 2600 only)**

*Hand-delivered responses should be brought to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).*




11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Trinh whose telephone number is (571) 272-7888. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiners supervisor, Anderson, Matthew D., can be reached at (571) 272-4177.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600 Customer Service Office** whose telephone number is (703) 306-0377.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tan H. Trinh   
Division 2618  
October 27, 2006

**PATENT EXAMINER**  
**TRINH, TAN**

